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GRASMICK'S BORDER REPORT:  
U.S. Immigration for Canadian Businesses and Professionals  
September 30, 2011

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2. DEVELOPING A CANADIAN BUSINESS IN THE U.S.

"You know your stuff! You educated me about my proposed U.S. business. I especially thank you for your integrity: not everyone would pass at taking someone's money for work that the client can do. It tells a lot about a person."

--Management analyst, Canadian government agency, 9/2011

"Good news. I got my TN today! I would not have made it without your help. Grateful."

--Systems Analyst, 6/2011

1. PERSONAL CONSULTATIONS IN THESE CITIES

I am available for face-to-face personal consultations in

-Toronto Ontario (10/18/2011),

-Kingston Ontario (10/19/2011),

-Ottawa Ontario (10/20/2011), and

-New York City (11/8/2011).

2. HOW TO EXPAND YOUR CANADIAN BUSINESS INTO THE U.S.

Here is the full text of a speech by Joseph C. Grasmick. This surveys immigration tools needed by principals of Canadian businesses who wish to expand their market into the U.S. The conference was the "Export USA (NEBS) Mission," sponsored by the Trade Commissioner Service, Canadian Consulate General Buffalo, NY September 21, 2011.

Export U.S.A. (NEBS) Mission  
Overview of U.S. Immigration  
Presented by: Joseph C. Grasmick

#### INTRODUCTION

Hello. My name is Joe Grasmick. I am a lawyer, and all I have done for years is handle U.S. immigration for Canadians.

#### GETTING ACROSS THE BORDER

Immigration is essential for cross-border business and it is usually the first thing that comes up. It is "getting your body across the border".

Many things are tough to handle from a distance:

- visiting distributors or customers,
- getting paperwork such as leases, incorporation documents and business licenses,
- financing,

and so forth.

Many of my clients' U.S. startups were triggered by that crucial first U.S. customer. . .and you don't want to have to call someday, and say you're stuck at the border and won't show up for that meeting.

Immigration can get confusing. It may help to understand that the immigration world everywhere, has three categories:

1. non-immigrants,
2. immigrant/permanent residents and
3. citizens.

(It is the same in Canada.)

Almost 3/4 of noncitizens are nonimmigrant. That includes you, and millions of Canadian retirees, visitors, and business people. Tens of thousands of others are here on various temporary work permits.

Today we will talk about a few of the non-immigrant ways to get across the border.

#### 1. JUST CROSS THE BORDER AS ALWAYS

Most Canadians coming to the U.S. do just that---use the quick and easy B-1 permit. Although B-1's are limited, it is all most of you will ever need.

You are probably all familiar with the B-1, if not by name. If you are Canadian, and you told them at the border "I'm coming for a seminar or meeting", you are here on B-1 status. You do not have any paper proving it, but you need to follow the B-1 rules while you are here.

What are the B-1 Rules?

I wish I got a dime every time someone says, "I won't have any problems. I'm getting paid in Canada."

Compensation from Canada is a necessary but not sufficient condition of B-1 status.

Therefore, it is a good thing to keep all the requirements in mind. You do not know what questions they are going to ask at the border, but

this background knowledge will help you say the right thing--- truthfully of course---to the inspector. (I say truthfully of course because fraud is a permanent bar from every entering the U.S. for any purpose whatsoever . . . not even lunch in Buffalo or Disneyland.)

Here are the requirements---the 'real ones" as they actually work at the border:

1. Must leave the U.S. when your business ends. The entry must be temporary.
2. Must serve a non-U.S. employer. The B-1 visitor for business must perform services for a foreign company. For example, a salesperson can solicit orders for a foreign company. He or she could also make a market study regarding future business in the U.S.

The B-1 visitor should not actively manage operations of a U.S. company. For example, if you are selling something, that may be fine, but if you are coming here to manage an ongoing distributorship network, they may not let you in.

Immigration can let you in to manage company startup operations. In this case, there is a safe harbor if you show that you have not yet set up your U.S. company. Immigration rules specifically allow people who would eventually qualify as L-1 transferees or E visa investors or traders into the U.S. under B-1 status to set things up. (We'll talk about these two later)

3. No money from the U.S. The source of payment for services and expenses of a B-1 businessperson in the U.S. should come from outside the country. The B-1 business visitor cannot receive salary or payment in any form from a U.S. source. Avoid commissions tied to U.S. work. Ideally, the Canadian company should issue payment, in Canadian funds, drawn on a Canadian bank.
4. Job duties must be of acceptable B-1 nature. The B-1 visitor for business cannot perform productive tasks that local U.S. workers usually do. They call this "local labor for hire." This is hard to define. It might depend on the judgment of the officer at the port of entry. It is often like the Supreme Court definition of pornography: "I'll know it when I see it." Rule of thumb: the more what you are doing looks like international commerce, the better. International commerce is the exchange of goods across the border . . . including computer software.

A safe port is the After-sales Service B-1. This is valuable and underused. It is nice because folks coming in under this rule can actually "look" like they are doing work. They can have tools, wear work clothes, etc. It encompasses

- installers,
- repair and maintenance personnel, and
- supervisors.

These people must:

1. Have specialized knowledge.
2. perform services or train workers as required by a warranty or service contract for
3. the sale of commercial or industrial equipment or machinery, purchased from outside the country. This can include computer software

How to Get a B-1

There are three ways to get a B-1:

1. Show up at the border and state the purpose of your visit--the smile-and-wave approach.
2. Take a letter on your company letterhead, explaining the purpose of your travel. Show it if the border guard scrutinizes your entry. It is like Murphy's law---if you do not have it, they will ask for it . . . if you have it, they will not ask.
3. Arrange for a multiple entry "I-94 - Arrival and Departure Record"---proof that an immigration officer at a port of entry examined you and found you qualified for business-visitor status. The I-94 should make subsequent entries easier--because you have already proven your case once, to a supervisor.

[SHOW COPY OF FORM I-94]

To relate your trips to the rules, check out the handout from my TN Handbook "Chapter 4: Do I Even Need a TN? The B-1 Visitor Alternative." (That is the handout with the star and maple leaf.) The chapter that continues from there describes B-1 issues. I have given you the first pages. You can download the rest of the Chapter and the entire Handbook from the link there.

[TN HANDBOOK pp. 98-99 <http://www.grasmick.com/handbook.htm> ]

## 2. TRAVEL WITH A WORK PERMIT

When the smile and a wave wear thin, let's look at The "Usual Suspects" --- Other Business Visas for Canadians

When do you need a work permit?

Usually folks, who call me, just know. Their entries are being scrutinized. "I'm going to a meeting" becomes "what kind of meeting?" . Worse yet, you are pulled over for secondary inspection to go inside or at another counter to tell your story.

Another way to tell is to do your research right now and ask, "Where does what I do, fit"?

1. You do stuff that is clearly permitted under B-1, or

2. you are getting into grey areas, or
3. you really feel your activities are not allowed.

If you are in the last two areas, get a work permit.

Which work permit is yours?

Work permits are letters of the Alphabet (A, B, C etc.), and almost all the alphabet has been used. Therefore, I will not talk about all of them.

Except for the E, they are not technically visas but you may hear the word used.

Three of the usual suspects are

- H-1B, Professional Worker
- TN, Free Trade Professional
- L-1, Intracompany Transferee

I will talk a bit about the TN, L and E since they give Canadians special treatment. I will not talk about the H-1B unless someone had questions, but look at my circle chart in the TN Handbook (star and maple leaf again) at page 121 to compare the H-1 to the TN. As you see, the two permits are not mutually exclusive. You may qualify for both.

[TN HANDBOOK: p. 121, <http://www.grasmick.com/handbook.htm> ]

### 3. SPECIAL OPPORTUNITIES FOR CANADIANS:

A) TN at border, B) L-1 at border C) E TREATY INVESTOR at U.S. Consulate

A) FIRST, THE TN

NAFTA gives Canadians a quick and special status. You can get this TN ("Trade NAFTA") work permit, with no application form, within minutes of arriving at a port of entry. The TN is now good for three years at a shot with no automatic top cap on the total number of years you can be on TN status.

To qualify for a "TN-Free Trade Professional," you must be coming to the U.S. to work in one of the professions listed in the NAFTA agreement. Most of the TN professions require a bachelor degree. The NAFTA list can be confusing. I think my list is the best starting point. I printed the list for you from my website. It is in your handout, separate from the Handbook materials, "Grasmick's TN List" (with the grey bar on the left.) For more information, see my "TN NAFTA Home Page" cited on that handout. My site is also on my business card.

[GRASMICK'S TN LIST: <http://www.grasmick.com/tnlist.htm> ]

I took a "quick and dirty" look at the NEBS participant list, and looked at your industries. Based on your work, perhaps some of you can focus on these TN categories:

- Management consultant
- Dairy scientist
- Economist
- Engineer or engineering technicians
- Scientist or scientific technicians
- Graphic designer
- Industrial designer

Since a higher than average number of you in this group may be using the TN Management Consultant category, I have given you a few pages about it in my handout. Look at the Handbook handout again—star and maple leaf—"Chapter 11: The 'Tricky' TNs."

[TN HANDBOOK: pp. 188-189, 199, <http://www.grasmick.com/handbook.htm> ]

Most TN management consultant denials would not have happened had the applicant remembered two things: Management consultants

1. Advise (do not do) about
2. Management issues (not technical issues)

Here are some universal border TN requirements:

1. You must be Canadian.
2. On the TN list of specific job titles
3. Show documentation of arrangements with U.S. entity (company supporting letter)
4. Your U.S. employment must be temporary.

Each TN category has its own twists.

#### B) SECOND, GETTING AN L-1 AT THE BORDER

Only Canadians can get an L-1 at the border. (Anyone can get an L-1 by mail.)

Here are L-1 Requirements for the employer and employee:

1. The Canadian company is related to the U.S. company by ownership, in some specific way: affiliate, subsidiary or division
2. Canadian company must continue ongoing operations outside the U.S.
3. Employee must have held an executive, managerial position or specialized knowledge job with the foreign company, for full year within the three years immediately preceding application.

4. Employee must be doing this type of work at U.S. location.

C) THIRD, E-2 TREATY INVESTOR AND E-1 TREATY TRADER

Canadians are "kind of special" in that citizens of only certain countries can get these visas, but Canada is not alone on the list.

The E visas are less useful because you cannot get them right at the border. You need to apply at the U.S. Consulate in Canada. It can take months and lots of frustrating paperwork, and a personal interview. The Consulates are famous for the wide discretion they wield. Results can be hard to predict.

Once you get it though, they are nice. They are good for up to 5 years with no top cap on renewals. It is a real visa stamp in your passport.

Briefly, the main threshold requirement is that you or your company have substantial Canada-U.S. trade or are actively making a substantial investment.

How much is substantial? There is no set amount. There are some fuzzy formulas on the State Department website, but again, discretion reigns in the U.S. Consulate.

D) BY THE WAY, 1 OUT OF 20 CANADIANS IN A ROOM LIKE THIS HAVE A POSSIBLE DUAL CITIZENSHIP CLAIM

If you have an ancestor who was a USC—parent or grandparent—check it out. Look at the derivative citizenship chart on the "Citizens" link on my website.

[U.S. Citizenship For Canadians, <http://www.grasmick.com/citizen.htm> ]

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This information should take care of 90% of you. If you are in that 10% leave me your card with your question or email and I will get back to you.

[ [jgrasmick@grasmick.com](mailto:jgrasmick@grasmick.com) ]

Thank you!

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I offer this privately circulated e-mail to:

- my clients;
- U.S. employers hiring Canadians;
- Canadians working or conducting business in the U.S.; and
- professionals, such as lawyers and accountants, serving these people.

This "required reading" for my clients reveals in plain English what is happening at the border now. It does not just repeat the law. The

information is simple and easy to follow, with plain text, minimal markup and no pictures.

Here you will find stories not reported in the media. Of course, it is not legal advice; I only become your lawyer once you retain me in writing: <http://www.grasmick.com/hireus.htm>

For questions or comments or to share border experiences, write me at [jgrasmick@grasmick.com](mailto:jgrasmick@grasmick.com) . Kindly put "Border Report" in the subject line so I can prioritize your message.

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